

**Letter of Findings Number: 02-20140029**  
**Income Tax**  
**For Tax Years 2003**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

## ISSUES

### I. Tax Administration – Collection Fees.

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of collection fees.

### II. Tax Administration – Underpayment Penalty.

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent underpayment penalty.

## STATEMENT OF FACTS

Taxpayer is an Indiana corporation. Taxpayer filed a corporate income tax return for the tax year 2003 showing an outstanding amount of income tax due. Because of the underpayment of tax, the Indiana Department of Revenue ("Department") issued assessments for base tax, underpayment penalty, and interest. Taxpayer paid the underpayment penalty in October 2004, but the remaining liabilities were not paid until 2013. The liabilities advanced to the tax warrant stage, and the Department engaged the services of a collection agency. The collection agency levied Taxpayer's account for \$6,652.15, representing base tax of \$3,380.54, interest of \$1,647.11, and collection fees of \$1,624.50. Taxpayer protests the imposition of the collection fees and underpayment penalty. An administrative hearing was held, and this Letter of Findings results. Additional facts will be supplied.

### I. Tax Administration – Collection Fees.

## DISCUSSION

Taxpayer protests the imposition of the collection fees. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The issue before the Department is whether Taxpayer met its burden to prove the Department's assessment is incorrect.

If a person files a return without including full payment of tax, the Department must issue a demand notice for payment. IC § 6-8.1-8-2(a). The demand notice grants the taxpayer a ten day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a)(1). If a taxpayer does not pay the demanded amount or show reasonable cause for not paying the demanded amount within the ten day period, "the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When a tax warrant is issued, "a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount." Id. When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e). The Department may contract with a collection agency to collect delinquent tax plus interest,

penalties, collection fees, and other fees when it has issued a tax warrant. IC § 6-8.1-8-4(a).

In this case, the liabilities advanced through the legally required procedures. The Department sent demand notices for payment of the underpayment penalty and base tax. Although Taxpayer indicates that it moved during 2004 and did not receive the notices regarding the outstanding tax due, Taxpayer remitted payment for the underpayment penalty shortly after receiving the Department's demand notice for payment. When Taxpayer did not pay the demanded amount or show reasonable cause for not paying it, the Department issued a tax warrant for the base tax, penalties, interest, and collection fees. The Department employed a collection agency which levied Taxpayer's account pursuant to the Department's statutory authority. Taxpayer's protest is respectfully denied.

### **FINDING**

Taxpayer's protest is respectfully denied.

## **II. Tax Administration – Underpayment Penalty.**

### **DISCUSSION**

Taxpayer protests the imposition of the underpayment penalty. Again, all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The issue before the Department is whether Taxpayer met its burden to prove the Department's assessment is incorrect.

A taxpayer who "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment . . . is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. Whether a taxpayer demonstrates reasonable cause is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, Taxpayer filed a corporate income tax return for the tax year 2003 but failed to pay the taxes shown on that return. Taxpayer did not affirmatively demonstrate that it had reasonable cause in its failure to pay the outstanding taxes shown on its 2003 income tax return. Taxpayer's protest is respectfully denied.

### **FINDING**

Taxpayer's protest is respectfully denied.

### **SUMMARY**

Taxpayer's protest is respectfully denied on Issue I regarding the imposition of collection fees. Taxpayer's protest is respectfully denied on Issue II regarding imposition of the underpayment penalty.

*Posted: 06/25/2014 by Legislative Services Agency*  
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